

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ETHICAL PRODUCTS, INC.

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Ethical Products, Inc. (“EPI”). APS&EE and EPI shall hereinafter collectively be referred to as the “Parties.”

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that EPI is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that EPI sold (1) Pet Rain Slickers (“rain slickers”), including #560YSM, and (2) Spot Dog Whistles (“dog whistles”), including #5699, in the State of California causing users in California to be exposed to hazardous levels of DEHP and Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead and DEHP are each potentially subject to Proposition 65 warning requirements because Lead is listed as known to cause cancer and birth defects or other reproductive harm, and DEHP is listed as known to cause cancer and reproductive toxicity. The rain slickers and dog whistles shall hereinafter collectively be referred to as the “Products.”

1.2.2 On January 14, 2019, APS&EE sent a Sixty-Day Notice of Violation (the “January 14th Notice”), along with a Certificate of Merit, to EPI and the

various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the rain slickers. On February 7, 2019, APS&EE sent a Sixty-Day Notice of Violation (the “February 7th Notice”), along with a Certificate of Merit, to EPI and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the dog whistles. The January 14th Notice and February 7th Notice shall hereinafter collectively be referred to as the “Notices.”

1.3 No Admissions

EPI denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that EPI has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by EPI but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party’s counsel.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of the Effective Date, EPI shall not distribute, supply, sell or offer for sale the Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP, and no more than 100 parts per million (0.01%) of Lead

(“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Proposition 65 Warnings

2.2.1 Whenever a clear and reasonable warning is required under Section 2.1, EPI shall use a warning with the capitalized and emboldened wording substantially similar to the following:

WARNING: This product can expose you to chemicals, [including Lead and/or DEHP]¹, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, EPI may use a short-form warning on the product or its direct packaging substantially similar to the following:

WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

2.2.2 Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by EPI on the internet shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that EPI provides for a downstream retailer to sell on the internet,

¹ In accordance with 27 Cal. Code Regs., section 25603, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable.

EPI shall include an instruction that the retailer provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, EPI shall pay a total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$750.00) for APS&EE.

EPI shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. EPI shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE’s Fees And Costs

EPI shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, EPI shall issue payment to “Law Offices of Lucas T. Novak” in the amount of twenty two thousand dollars (\$22,000.00). EPI shall remit the payment in two installments, as follows: (1) Within five (5) business days of the Effective Date, a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of nine thousand five hundred dollars (\$9,500.00); (2) Within sixty (60) calendar days of the Effective Date, a second check or money order made payable to

“Law Offices of Lucas T. Novak” in the amount of twelve thousand five hundred dollars (\$12,500.00), to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 APS&EE’s Release Of EPI

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases EPI, its parents, subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors and retailers (collectively, “Released Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s Notices regarding exposure to Lead or DEHP from the Products sold or supplied by EPI in California before and up to the Effective Date.

4.2 EPI’s Release Of APS&EE

EPI, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against EPI in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER

SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO EPI: Carey L. Cooper Klinedinst San Diego 501 W Broadway, Suite 600 San Diego, CA 92101	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed

an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 5/22/19

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: _____

By: _____
Authorized Representative of Ethical Products, Inc.

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AGREED TO:

Date: _____

By: _____
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: May 21st, 2019

By: 
Authorized Representative of Ethical Products, Inc.

Jonathan Zelinger